

MINUTES OF HARRISONBURG PLANNING COMMISSION
September 9, 2009

The Harrisonburg Planning Commission held its regular meeting on Wednesday, September 9, 2009, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Jared Burden, Charles Chenault, Muawia Da'Mes, Alan Finks, and Bill Jones.

Members absent: J.M. Snell

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Burden called the meeting to order and determined a quorum with six of seven members in attendance. He then asked for review and approval of the minutes from the August 12, 2009 Planning Commission meeting.

Mr. Jones moved to approve the minutes from the August 12, 2009 meeting.

Mr. Chenault seconded the motion.

Mr. Finks abstained from voting on the motion because he was absent from the August meeting.

All voted in favor of approving the minutes. (6-0)

New Business

Special Use Permit – 1430 Red Oak Street

Chairman Burden read the first item of business and asked for staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The following land uses are located on and adjacent to the property:

- Site: Old quarry site and undeveloped property, zoned M-1
North: Undeveloped properties, zoned M-1
East: Contractors, building material sales/storage, zoned M-1
South: Corn field/undeveloped land, zoned M-1
West: Pilgrims Pride, zoned M-1

The applicant is requesting a special use permit to allow the property at 1430 Red Oak Street to be used for recreational and leisure time uses as permitted within Section 10-3-97 (10) of the Zoning Ordinance. Previously an old quarry site, the property is now what the owners describe as a wildlife habitat that consists of a lake, cliffs, wooded and open areas. The current owners use the acreage as a retreat for themselves, family and friends where they can camp, picnic, swim, fish and more. At times small groups, such as a local sports team, will use the quarry to relax and swim. Historically,

goats have been kept at the quarry site; and the current owners continue to keep two goats there to help clear some of the vegetation.

At this time the owners wish to construct two cabins on the acreage. The cabins would provide the site with shelter, kitchen areas and indoor bathrooms with running water. Because the property is zoned M-1, General Industrial this type of housing structure is not a use permitted by right. Currently a 28' by 40' storage building is being constructed at the site; storage and warehouse buildings are permitted by right in the M-1 zoning district. The cabins, however, would further facilitate all the recreational uses, more so than a storage building and for that reason the owners are requesting the recreational and leisure time special use permit.

A perimeter fence surrounds the 16+ acres and it is gated and locked from the general public. The owners intend to keep using the quarry habitat in the same private manner and have stated that due to liability costs the area will remain closed to the public. The cabins will not be leased or rented to transient occupants and will be used only by family and friends who are there enjoying recreational activities at the site. In discussions with staff, the applicants have said that there are some recreational activities that they do not allow, such as jet skies or water skiing; the quarry is not conducive to such type uses with its high cliff walls.

The owners have stated that the quarry habitat would be utilized by family members and friends and closed to the general public. Although staff does not have any major concerns with the described uses for this request, there are other more intense recreational and leisure time activities that could occur which may increase visitors to the site and cause traffic and parking concerns. Therefore, staff proposes placing some conditions on the special use permit so that it is not open ended for all recreational and leisure time activities, but limited to those listed by the owners. Staff recommends 1) limiting the site to the two proposed cabins only; 2) that the cabins cannot be occupied on a long term basis and 3) staff shall be authorized to review any complaints received regarding the property and based on their finding may require the applicant to return to Planning Commission and City Council for a public hearing to re-examine the use of the property. Such re-evaluation may result in additional conditions being placed on the use.

Staff supports this request and a favorable recommendation to City Council with the conditions listed above.

Chairman Burden asked if there were any questions for staff.

Mr. Da Mes asked what would be considered a long term basis.

Mr. Fletcher replied that often times when we look at the long term stay hotels/motels it sometimes falls within a two week period; that is just a guideline we could go by. It could be a condition that is placed on the special use if you deem it necessary.

Mr. Chenault said the way I read the conditions drafted is that if it does become an issue, it could come back before the Planning Commission for additional conditions placed on it.

Mrs. Banks said the Zoning Ordinance defines that transient housing, or hotel/motel, is to be used or hired out on a weekly basis; therefore I would say that it should be nothing longer than one week.

Chairman Burden asked if there were any further questions. Hearing none, he opened the public hearing and invited the applicant or the applicant's representative to speak.

Mr. Ed Blackwell, of Blackwell Engineering and also one of the property owners, said he is here to answer any questions the Commission may have about the property or the intended uses.

Mr. Jones asked how do you feel about the stipulation of on a weekly basis; what if you had a friend from out of state who wanted to come in and stay for two weeks.

Mr. Blackwell said we have had people who come in for five or six days and stay in a camper; it might make it easier for people to stay longer if they have a cabin to stay in. There are times when we have an entire family camping there for the weekend.

Chairman Burden asked if there was some informal relationship with local schools or groups, for them to come in and use the quarry; we had heard something about the EMU soccer team using it.

Mr. Blackwell said we rarely allow the quarry to be used by large groups; sometimes church groups may use it. The EMU soccer team does use it, we have some friends on the EMU soccer team and they were aware of the quarry. The EMU soccer coach signs a waiver form for the team to swim there. So yes, we do allow some small groups. Kathy's Scuba uses it regularly for scuba diving, Rockingham County Sheriff's Department dive and rescue team uses it for training, groups typically like that.

Chairman Burden asked if there were any further questions for Mr. Blackwell. Hearing none, he asked if there was anyone present who would like to speak in favor of this request. Hearing none, he asked if there was anyone present who would like to speak in opposition to this request. Hearing none, he closed the public hearing and asked Planning Commission for their comments and discussion.

Mr. Finks said he feels the length of stay is rather subjective and the City does not have the personnel to watch outside of the fence to see who all is coming in and how long they may be staying there. I think the conditions are good and move to recommend approval as presented with the conditions.

Mr. Chenault seconded the motion.

Chairman Burden asked if there was any discussion on the motion. Hearing none, he called for a voice vote.

All voted in favor of the special use permit with the three conditions suggested by staff. (6-0)

Chairman Burden said this will move forward to City Council on October 13, 2009 with a favorable recommendation.

Preliminary Plat – Cypress Park

Chairman Burden read the next request and asked for staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The following land uses are located on and adjacent to the property:

- Site: Single family home and undeveloped land, zoned R-1
- North: Land owned by Rockingham County, zoned R-1
- East: County property, owned by Rockingham County and used for landfill operations
- South: County property, zoned R-3C for single family homes

West: Industrial uses, zoned M-1

The applicant is requesting to preliminarily subdivide 32.9 +/- acres into 79 single family home and two common area lots on property zoned R-1, Single Family Residential District in the southern most portion of the City. Although there are seven different streets within the City portion of this development, five of which end as cul-de-sacs, the property would have only one public street entering into the neighborhood to serve the entire community and therefore staff interprets it as one, large cul-de-sac. Therefore, the applicant is requesting a variance from the Design and Constructions Standards Manual (DCSM) Section 3.1.10.2 to exceed the City's maximum cul-de-sac length of 800 feet. The applicant is also requesting a variance from the Subdivision Ordinance Section 10-2-42 (i) to allow a common area lot to deviate from the lot dimensions that are required by the Zoning Ordinance.

The subject area has been zoned R-1 since annexation from Rockingham County in 1983. The City's Planning Commission originally proposed this entire area for the M-1, General Industrial District, yet at the public hearing on zoning of the annexed area, the property owner requested an R-1 zoning, which was then recommended by Planning Commission and approved by City Council.

Over the past few years, this property has been proposed to be developed in several different designs. The first application to preliminarily plat this acreage was submitted in August 2004 under the name of Eagle Aerie. The developer applied to plat 190 single-family home lots on 69 acres. The applicant tabled the request and resubmitted another design in June of 2005 under the name Cypress Park. That plan included 182 single-family units on a street layout similar to the first proposal. This proposal was also tabled by the applicant to adjust details.

Then in August 2005, a new plan was submitted because Rockingham County purchased 13.13 acres of land from the original 69 acres. The County planned to use the 13 acres for groundwater monitoring for the adjacent land fill. This plat proposed 142 single family home lots on 56 acres. City staff did not support the request; however the preliminary plat was approved with a variance to the DCSM Section 3.1.10.2 allowing more than 250 vehicle trips per day and to exceed the City's maximum cul-de-sac length. Planning Commission recommended approval of the application with a vote of 3-1 and City Council approved the request 4-0.

After approval of the preliminary plat, the applicant submitted a comprehensive site plan. The last interaction regarding the site plan occurred in November 2006 when the City sent comments back to the applicant's engineer stating the plan was "accepted withheld" pending further revisions. In other words, their engineer had to resolve several issues before it could be approved. The applicant eventually sold 23 additional acres to Rockingham County for groundwater monitoring, which necessitated design changes with their submitted development plans. In addition to these events, the applicant violated Section 10-2-26 (d) of the Subdivision Ordinance, which required them to file a final plat or section thereof within 12 months of the preliminary plat approval date (this ordinance has since been amended from 12 months to 24 months). Due to this violation of the Subdivision Ordinance, the approved preliminary plat became null and void.

In April 2007, the applicant returned to Planning Commission to attempt to renew their preliminary plat. During this review staff again recommended denial of their request. Planning Commission, however, did not vote on this application as the property owner tabled their request during the meeting to work out further details for emergency access. Several months later, staff sent the

applicant a letter in January 2008 notifying them their application was no longer active and that a new application and submission would be required to proceed with their development proposal.

The applicant is now requesting to preliminarily subdivide 79 single family home lots on 32.9 +/- acres zoned R-1, Single Family Residential District. To receive approval for this preliminary plat, the applicant must receive a variance from the DCSM Section 3.1.10.2 to exceed the City's maximum cul-de-sac length of 800 feet and to exceed the maximum vehicle trips per day on a residential cul-de-sac, which is 250. An additional variance is also needed from the Subdivision Ordinance Section 10-2-42 (i) to allow one of their common area lots to deviate from the lot dimensions that are required from the Zoning Ordinance.

Staff has several concerns with this plan of development, but the issue of use of the property for residential purposes cannot be considered because the property is zoned appropriately for single family use. The issue that can be called into question for this plan of development is the variance request to exceed the maximum cul-de-sac length, which more than triples the number of lots that could be built in this area.

This site is in the middle of an area developed with and zoned for intense industrial uses. Although this acreage is zoned for residential purposes, the nature of the surrounding area gives staff great concerns with the attempt to increase the density of residential development. If approved, residents would not only have to live among hazardous noise, dust, and debris but would have to travel through industrial uses with the associated industrial traffic currently using Pleasant Valley Road.

To compound the issue further, this development would literally be a neighbor to the active County landfill, which is jointly used by the City of Harrisonburg. The landfill, to say the least, is not an ideal neighbor. The City receives concerns from residents of other neighboring subdivisions, who are dissatisfied with noise, dust, debris and odors. The creation of Cypress Park, regardless of the number of units, has the potential to cause requirements for more stringent monitoring for groundwater contamination, methane gas mitigation, and other environmental regulations. This has been the situation experienced near the single family homes across the street from the Ramblewood Road ball fields, which is the closed City landfill site. To help separate the proposed subdivision from the landfill, the applicant has proposed a 50-foot in width buffer easement along the rear of the lots that directly abut the active landfill property.

The submitted design illustrates 79 single family home lots that front on public streets and two common area lots. The sizes of the residential lots either meet or exceed the requirements of the R-1 zoning district. Groundwater monitoring wells have already been installed in this area, some of which would be located on single family home lots if this plan of development is approved. After having discussions with the County's Public Works Director, it should be known that the City and/or County could either have to purchase the lots or establish some type of easement for continual maintenance on the lots that have the groundwater monitoring wells.

One of the common area lots would contain stormwater management and house water vaults for the City and the County while the other common area lot would require a variance from the Subdivision Ordinance because it does not have the required 80 feet of street frontage. This particular lot would be a recreational parcel that could be used by all residents of the neighborhood. At a minimum the developer plans to have two park benches and two picnic tables on this parcel. Staff has no concerns with this particular variance request and supports the applicant's request to deviate from the lot dimension requirement. Since the neighborhood would have common areas, a homeowners association will need to be established. The most recent version that staff has of the protective

covenants and conditions specifies that the association shall be responsible for all maintenance, repair, and replacement of the common areas and emergency access roads. The City would be responsible for maintenance of the dedicated public streets, including trash pick-up and snow removal.

There is a future section planned for this development that would be located within Rockingham County. In December 2005, Rockingham County rezoned 16.5 acres of adjacent M-1, General Industrial land to R-3C, General Residential Conditional. This section had previously received preliminary plat approval from the County, however it too has expired. This phase planned for an additional 46 lots and would be accessible from two planned City streets ending at the jurisdictional line. The County phase illustrates two potential road extensions in the direction of Pleasant Valley Road; however, there is no guarantee those extensions would ever occur.

As described above, access to the site travels through an intense industrial area. The site is currently accessible by one, substandard public street known as Willow Spring Road. One of the most complicated concerns for this subdivision is the safe accessibility for the potential residents. Staff interprets the entire development as one large, long cul-de-sac; far exceeding the 800-foot maximum length. The proposed development would generate approximately 750 vehicle trips per day—about 80 in the peak hour—and because there is no guarantee a road would connect from the County phase of this subdivision to Pleasant Valley Road, all vehicles would enter and exit through the City section of the development. Counting both the City and County sections, the entire development would generate approximately 1,200 vehicle trips per day and roughly 130 vehicle trips during the maximum peak hour. The applicant did perform a Traffic Impact Analysis (TIA), which determined that no individual lane groups dropped below a level of service (LOS) C, which is the generally accepted LOS guideline. The proposed development actually would not alter any LOS for the evaluated roads and therefore the developer would not be required to make any road improvements.

To make accessibility issues more complicated though, there is an active railroad crossing, with three trains a day at 10 mph, located on Willow Spring Road that must be traversed in order to enter and exit this development. Currently, the railroad crossing has a “passive warning,” which means there are no flashing lights or gates. There are two different types of warnings, passive and active. Passive warnings have only signage to warn for the upcoming railroad crossing while active warnings can have either flashing lights or gates or both. Staff spoke with Rick Ray, the Administrative Highway Crossings Administrator out of a corporate office for Norfolk Southern in Atlanta, Georgia, who said a diagnostic review determines what type of warning devices are necessary for railroad crossings. In this situation, the developer did not perform a diagnostic review. Mr. Ray did say however, that generally, if a school bus must cross a railroad track, then almost always an active control will be necessary.

To help emergency response services, a 12-foot wide “tar and chip” road within a 20-foot wide emergency access easement would be provided extending almost a half mile from the subject property across the Banta property to Pleasant Valley Road. The emergency access road would be controlled by a locked gate. It would be the responsibility of the homeowner’s association to repair the surface and remove snow. If emergency responders needed to utilize this road, they would travel Pleasant Valley Road to Banta’s southernmost entrance and then travel on the fire lane that circles the rear side of the building and then onto the emergency access road. As noted on the plat, if approved, the emergency access road would be installed during phase one of the development.

During previous reviews, the developer was proposing an additional emergency access location from Greendale Road; however that emergency access point is no longer part of this development.

As stated above, the applicant plans to create a 50-foot buffer zone along the lots that directly abut against the active landfill property. In regard to the adjacent County property to the north, the sale agreement between the applicant and Rockingham County discusses the limitations on the use of the 36 adjacent acres and states the buyer shall not use the property as an expansion of the Rockingham County Landfill; staff recommends a buffer be established along the property boundaries of the lots that abut that area. The agreement describes the use of the County property may include groundwater sampling, treatment, testing, remediation, ground cover for the landfill, and other activities considered accessory to a landfill and for any other lawful purpose except as set forth in that section. Although the plat illustrates that a fence and a tree buffer will be established along the northern property boundaries by the County, the applicant's attorney verified there is no such agreement. He said the County might plant sycamore trees on this adjoining property but for the most part the property would remain a green area. Since the majority of the County property will probably be sparsely wooded or remain an open field, buffering the homes from the proposed uses of the property would be in the best interest of the potential residents.

The plat illustrates a bus stop location and an example of what the bus shelter could look like. The Director of Transportation stated that there would probably not be a transit bus stop within this development and that if future residents wanted to ride the bus they would have to request an on demand pick up and maybe have to walk out to Pleasant Valley Road to meet the bus. He did mention that if the developer plans to install a bus shelter that it could be used as a pick up location for students to ride the school bus. If the developer wants to install a bus shelter he should work with the Transportation Department to determine the best location. Furthermore, if a bus shelter is placed within the development, it should be maintained by the homeowner's association.

The Public Utilities Department has reported a concern with water pressure variations in this area. They have stated that prior to site plan approval for this property; a water hydraulic analysis will be required of the developer, to ensure adequate service is available.

When the applicant originally submitted the plat during this review, there were no street connections between Willow Spring Road and Myrica Cove or connections between Zelkova Place and Cedrus Trail, which is one of the streets planned for the County portion of the development. Staff had several concerns with this layout because it created internal long cul-de-sacs within the overall long cul-de-sac that would make up this neighborhood. After suggestions by staff for the applicant to try to incorporate a more connected street grid by connecting the cul-de-sacs, the developer laid out Robinia Street as shown on the plat to facilitate a more interconnected neighborhood. Staff appreciates the developer's intent to improve traffic flow for this community; however there are additional concerns with this layout. Although the applicant's engineer has not fully engineered the final layout of the streets, the City Engineer roughly calculated the grade change between the street centerlines of Willow Spring Road and Myrica Cove as they are shown. Between these streets, the connection would be 285 feet in length with roughly 30 feet of grade change, which means the best case scenario would be a street with the center portion at 20 percent grade. This is double the City's standard while also forgiving landing grade requirements and sight distance requirements. Some regrading of Willow Spring Road and Myrica Cove could improve this situation; however they too are at a maximum grade at some sections of the street, which could force additional variances in their street designs and also for other streets. Staff is not supportive of the original design with the internal, long cul-de-sacs or the submitted design with the Robinia

Street connecting the cul-de-sacs. These concerns give more bearing to the fact that residential development in this area should not exceed by right opportunities. If the applicant chooses to continue forward with the submitted design they would need variances from the DCSM Sections 3.6.2.3, 3.6.2.4, and 3.6.3. These sections are associated with landing requirements, vertical curves, and the geometric design of the streets, which includes maximum grade and sight distance.

Staff appreciates the applicant providing the emergency access into the subdivision; in emergency situations this should help provide additional support for responders. However, this access does not provide the answers to all of staff's concerns for the proposed development. As mentioned earlier, staff has concerns with allowing residential development in this area of the City, but due to its existing zoning the City must permit what the regulations allow. By right, the property owner could develop roughly 25 single family home lots in whatever public street fashion they deem is necessary and that also meets the City's design regulations. Staff does not believe it is prudent to build more single family homes in this area than what is allowed by right. It is unjustifiable to approve a variance that would expose more people than necessary to such living conditions. Seeing as there will be a homeowner's association, if this development is approved, future residents will have the burden of having to pay association fees and keeping a sound association in operation. Furthermore, these burdens would more than likely be placed upon lower income families because due to this property's location, the development will probably cater more to that demographic. With the above issues in mind, staff recommends protecting the City and its residents from more harm than necessary.

Staff has been consistent since the original submissions of this plan of development and believes granting this variance is not in the best interests of the City. If the variance is granted however, staff has two recommended conditions. The developer shall construct the emergency access road so it is functional during the first phase of the project and the developer shall perform a diagnostic railroad review to determine if active controls are warranted for the railroad crossing. Because of the above discussed concerns, staff does not support the variance request to Section 3.1.10.2 of the DCSM and recommends denial of this preliminary plat application.

Chairman Burden asked what is the effective length of this cul-de-sac.

Mr. Fletcher replied that he does not have a tally of all the streets combined together, but the first cul-de-sac alone (from the beginning of the property to center of cul-de-sac) exceeds 800 feet, it is closer to 1,000 feet. That may help give you an idea of what the entire length is of all the streets added together.

Chairman Burden asked if there were any questions for staff.

Mr. Da Mes asked if it was a requirement that the County purchase the property and was it for monitoring purposes.

Mr. Fletcher said he does not know if it was a requirement. The County does monitor the effects of what is going on with the landfill; but I do not know of any requirement that they had to purchase it.

Mr. Da Mes said there appear to be some monitoring devices that are on this development.

Mr. Fletcher replied yes, the groundwater monitoring is already on site and there may be a device that would be located on one of the lots in the development. I spoke with the Rockingham County Public Works Director, who said that if this subdivision were to be approved, there is the potential that ultimately either the City or County would have to purchase the lot(s) with the monitoring

devices or have a permanent easement on them for maintenance. The groundwater monitoring devices are not going anywhere.

Chairman Burden asked does that mean that the County put the devices on property other than their own.

Mr. Fletcher said the applicant can probably speak to that better than I can; but based upon the location and the proposed site plan, it appears the device is definitely on the subject property.

Chairman Burden asked what exactly is going on at the landfill directly adjacent to the 50 foot landscape buffer; is trash actively being placed at that location?

Mr. Fletcher replied yes it is active landfill. This brings up the point that regardless of the number of lots within the development, the landfill will cause these properties to have continual maintenance for methane gas, groundwater monitoring, and radon. Every now and then the City gets complaints about smells and noise from the landfill. So regardless of the number of lots at this development there are going to be issues associated with the landfill.

Mr. Finks said regarding the grade, the most distance he could get is 16 feet, not 20 feet; of course that is debatable.

Mr. Fletcher said the City Engineer roughly calculated that at the steepest grade it would be 20 percent. Due to some of the landing requirements and to help sight distance if the applicant's engineer were to design the streets and make some changes to the two longer cul-de-sacs, the severity of the grade could lessen; but at its most severe it could be 20 percent. The applicant's engineer has said they could get it down to somewhere between 12 and 16 percent and I believe he may speak on that.

One other thing I need to mention is that because there are two common areas, there would have to be a homeowners association established that would be required to maintain those areas, as well as the emergency access. There is a high probability that, due to the location, these are probably going to be homes that cater to lower income families and a homeowners association may put an undue burden on them to have to pay into and maintain these areas. This is just one more reason why staff believes it is not in the best interest of the City to expose citizens to those types of conditions.

Chairman Burden said this is a preliminary plat and is not a public hearing; however if the applicant or applicant's representative would like to speak they may do so at this time.

Mr. Steve Weaver, attorney with Clark and Bradshaw, said he represents Cypress Park and its owner, John Girdley, who is also here tonight. Also here this evening is Ed Blackwell of Blackwell Engineering. Mr. Blackwell has done the engineering work on this project and will speak after my presentation.

John Girdley has been in Harrisonburg about ten years, he was the owner and developer of Beacon Hill, which is a townhouse subdivision that he took over from a broke, prior developer who was failing. Mr. Girdley gradually, through Planning Commission and City Council, revised the site plan and turned Beacon Hill around when the north end of Harrisonburg was not very well developed. It is a very nice, large townhouse subdivision, which has been built slowly with the housing demand. He and his wife are strongly committed to affordable housing, and this is the second piece of property he has bought in the City to develop. He is still slowly developing Beacon Hill.

I really think the issue this evening will boil down to the City's interpretation that this subdivision constitutes a cul-de-sac and is that interpretation correct or not. From the very beginning in 2004 when this was first proposed and a preliminary plan was drawn up, the staff has been very opposed to this subdivision going in. The reason, I think, does not have to do with the cul-de-sac, but it has to do with the location. When you read the staff report, they (staff) are not happy with the fact that this property is zoned R-1. The facts are the facts; this land was zoned into R-1 in 1983, by the Planning Commission and approved by the City Council. Staff was opposed to the plan when it was 190 lots and they were opposed to it when it was 142 lots; Planning Commission and City Council approved the plat for 142 lots. Even though there was preliminary plat approval, there were issues concerning emergency entrances that we had to struggle with and the 12 month plat approval expired before we were able to resolve that issue. Now it is 79 lots, 60 percent less than was originally platted, and of course, staff is still opposed. They are still opposed to it for the same reasons and I understand that. I am not complaining; staff has been excellent to work with. Staff has been very forthright with us; all information has been passed back and forth between us, staff and the engineering firm.

I would like to explain a little history on this. For those who have been around a long time this is referred to as the Callender property, it was owned by the Callender family for many years. It came up for public auction about 8-10 years ago, the City and the County were both aware of the public auction, and I think, but cannot say for certain, discussed whether or not it should be purchased because it was adjacent to the landfill. A third party bought the land and they held it for a couple of years and then sold it to Mr. Girdley; so Mr. Girdley is not responsible for any of the history, he bought R-1 land around 2003. As he was starting the development and subdivision of this property, the County came to Mr. Girdley and asked to purchase 13 acres. I think the EPA was really pushing the County to do so because of the ground monitoring that needed to be done. Mr. Girdley sold the land to the County. Again we started the process of subdividing and again the County came to Mr. Girdley and said they wanted 23 more acres. Mr. Girdley sold the property and encouraged them to take more if needed so that they would not need to come back again. The County has committed to those 36 acres as not being part of the landfill, but being part of the green area for the landfill. It is a great buffer between this subdivision and the County landfill; it is 36 acres of forever green space that will be monitored by the County. The County has discussed planting different types of plants in the acreage because they have a ground water issue, apparently, these plants will help to neutralize bad ground water. It makes an excellent adjacent neighbor to this subdivision. Now we are at 60 percent fewer lots than originally planned. The staff references their history of these submissions, withdraws, and delays; but in essence each one of those was prompted by negotiations that started with the County and their need for this land and Mr. Girdley's willingness to work with them. We had to go on hold as these instances took place.

Mr. Girdley has always been willing to work with the City and County. In dealing with the County we arrived with an emergency access easement, which came over to the site from Greendale Road, above the railroad tracks. It came through the 23 acre tract that we were selling to the County and it adjoined the subdivision where Willow Spring Road goes into the subdivision. The staff did not like that emergency access; so we went back on hold again. The reason staff did not like it, I think, was because the emergency access and Willow Spring Road came to a common intersection and therefore did not provide what you would call a back door into the subdivision for emergencies. If Willow Spring Road was blocked, the emergency access could essentially be blocked in this case. We then went to Banta for access. We had a letter the last time we came to Planning Commission

and that letter was signed by the General Manager of Banta, saying that they would grant us an emergency access. In the mean time Banta got bought out by R. R. Donnelly and we had to start over with R. R. Donnelly. I took us a while to work through the process, but they did grant an emergency access over the existing fire lanes, already approved by the City Fire Marshall and already marked on their pavement into our subdivision. At the same time we made a deal with them to improve stormwater management; we have oversized our stormwater management system to be able to catch enough water. In the past, too much water has come off the Callender property and the landfill and it has flooded the Banta property. Therefore, we joined our oversized stormwater management with Banta's very small management system on their property. We recorded those documents in February of 2009.

This gives you a bit from our perspective as to why these delays have kept going for the last two or three years. So, we are now back before you; we are 60 percent smaller, we have the emergency access issue solved, we are properly zoned, and have been previously approved by the Planning Commission and City Council. Ed Blackwell will go over the engineering requirements for this subdivision. Which now brings us back to the cul-de-sac issue.

The developer is required to provide, on his site, specific standards that are set forth in the Design and Construction Standards Manual (DCSM). The master plan honors all of those cul-de-sac requirements within the development. It has connectivity to what will ultimately be Pleasant Valley Road to the west and all the streets run to the property line. Needless to say, I do not agree with staff's interpretation that this constitutes one large cul-de-sac. It is a characterization, but it is not a strict interpretation of the rule. The rule simply says that a development will not have streets more than 800 feet long. By adding the crossover streets this development meets all those criteria. We do not believe that our development does constitute one large cul-de-sac; we understand how the City defines it, we just disagree with it. I believe we have done what we are legally required to do. Think about this regulation all over the City of Harrisonburg. For instance, Wyndham Woods by this interpretation is one large cul-de-sac and there is probably not a person in this room who has ever thought of Wyndham Woods as a cul-de-sac. Another location is Meadow Point, an area made up of duplexes, located behind the motor mile, along Point Drive. Meadow Point has an entire system of roads within it; but it only has one access. On that theory, Meadow Point is a cul-de-sac.

We are requesting approval on this preliminary site plan this evening, we think we should have it. I believe there is the issue of the cul-de-sac, which is somewhat the gorilla in the room at this point. Whether we agree with City staff or not, when we ask for approval tonight, we are asking for that variance. I think the other variance regarding the lot width of the common area, which staff is recommending for, is an easy request. We are giving a green area and we have taken lots out of the development simply so people would have a place to gather. The third variance that Mr. Fletcher brought up this evening has to do with the street and I will let our engineer, Ed Blackwell, address that issue.

Mr. Chenault said the gorilla in the room is the cul-de-sac issue. What is the answer to that and how would we handle this from a legal standpoint? It is a big issue. If you were not going to concede the cul-de-sac issue what would be the course of action you would take to get that resolved. It is not a Board of Zoning Appeals (BZA) issue. Do you appeal staff's decision to Circuit Court; what are the answers?

Mrs. Turner asked you being who, if this were appealed to Circuit Court.

Mr. Chenault replied the applicant, if they disagree with staff's interpretation that this is a cul-de-sac.

Mrs. Turner said if it is ultimately turned down by City Council, then the applicant would be disagreeing with City Council's decision to turn down the cul-de-sac on the basis that it was against the City's requirements.

Mr. Weaver said I have not seen this interpretation of the cul-de-sac in which, when a development goes off of an already dedicated street, that they are going to use the City dedicated street against the developer and call it a cul-de-sac. I have gone back and looked at the manual, and the manual simply says that the developer shall not develop any streets more than 800 feet in length, or exceeds 250 vehicles per day. We are not doing that; so, from our point of view, we are in compliance. How we handle this is if the Planning Commission and City Council feel that by not granting the variance based on the cul-de-sac, they can close down our right to subdivide this land according to the R-1 zoning, then there will probably have to be a judicial interpretation of that. We do not want to get to that point.

Mr. Chenault said to follow through with that, I need to ask how Wyndham Woods and Meadow Point differ from this particular situation.

Mrs. Turner replied that when Wyndham Woods was developed we did not have a regulation on length of a cul-de-sac. City staff has always considered Wyndham Woods to be one large cul-de-sac and I believe if you were to go back and review the minutes from that subdivision there was some objection to Wyndham Woods because of the cul-de-sac aspect. But we had an older standards manual at that time. With Meadow Point I believe only Pointe Drive is a public street; the remainder where the duplexes are, are all private streets. The City does not have a requirement on the private street area, our requirement relates to the public street area, so the private streets did not have to get a variance. I cannot remember if the public street required a variance on the length, I do not think they required it on the amount of traffic.

Chairman Burden asked what is the regulation about the 800 feet in length.

Mr. Fletcher replied that it comes out of the Design and Construction Standards Manual, which is administered by the City Engineer. It talks about street design, fire suppression, sanitary sewer, water lines, and many other different design guidelines.

Mrs. Turner said it affects mainly the public facilities that the City owns and maintains after development has been put in place.

Mr. Weaver said when we have been here in front of Planning Commission and City Council for this request in the past, the issue was avoided because essentially we said let's not fret about whether it is a cul-de-sac or not. Let's not get into an argument over interpretation of the design standards and what we chose to do instead was solve the issue. The reason why a cul-de-sac design standard is in place is because of fire and rescue; and the way to answer this subdivision with fire and rescue is to have an emergency access. We acquired an emergency access and then the staff said we really do not like that access. It took us about a year to acquire another one so that we could answer the problem with the cul-de-sac. We have connected all of the long cul-de-sacs with a crossover street and we provided an emergency access that was acceptable to the City. That is what solved the cul-de-sac issue. The problem now is that staff does not like the location of the land; it is not the cul-de-sac.

Mrs. Turner responded that fire and rescue is only one of the reasons for length of cul-de-sac and it is probably one of the predominant ones in this instance; but there are many other reasons to establish a maximum length of cul-de-sac. If every road were to be a cul-de-sac then we would have to maintain streets that only a certain number of people were utilizing. This would also cause more traffic at the intersections where those cul-de-sacs intersect with the primary or collector streets. For service delivery or a school bus, there is not the interconnectivity for efficiency. There are multiple reasons why; but with this one the primary one probably has to do with the emergency access.

Mr. Weaver added that there was one point he wanted to correct for the record. The area behind the Callender property that is owned by the County, and extends several thousand feet back, is all closed landfill; not active landfill as noted earlier. That is why they are monitoring the groundwater below, because it is closed. If you have been up on the site I am describing the area to the east of the dwelling that is there; that area is all old landfill that has been filled.

Chairman Burden asked if there were any further questions for Mr. Weaver. Hearing none, he asked if there was anyone else wishing to speak.

Mr. Ed Blackwell of Blackwell Engineering said he is the engineer for the applicant. I want to bring up a few things with regard to the layout, traffic, and other engineering issues. The lots within this subdivision meet or exceed the standards for the R-1 zoning requirements and there are no concerns with the lot layout. The design is a mixture of cul-de-sacs and interconnecting streets, which is a typical R-1, residential neighborhood. Most people like cul-de-sacs, and we have several on the final layout for this subdivision. These cul-de-sac lengths are limited internally. Staff mentioned that we do have one street, Robinia Street, which may have a section of it at 20 percent grade. That information is just incorrect. I believe it may be a misread of the topography map. That street will probably be somewhere around 12 percent, which meets the DCSM standards. Therefore, looking at this layout, we have interconnectivity and connection to adjacent parcels to the south in the County. Stone Spring Village is very similar to this subdivision, there was one way in, there were stub streets, one of which has been extended (King Edwards Way) and one still has not been extended. These roads eventually get extended and eventually the land to the south of this subdivision will develop, some is zoned R-3, some is zoned Agricultural, but it all has utilities in place and it will develop. So this subdivision will have some interconnectivity to the County at some point in the future.

The traffic study that we conducted showed that all the streets do meet a level of service B, even with this development in place. The railroad crossing was looked at with the traffic study. We met with the local railroad yard manager recently and he told us that they average less than one trip a day thru this area. It is typically between 8:00 a.m. and 12:00 p.m., which is after the morning schools buses and before the afternoon school buses. Any crossing that is required at the railroad tracks for this development, we are aware, would be part of our requirement for development.

There is adequate area on this site for stormwater management and water quality issues. The sanitary sewer has capacity in this area and there is adequate water at this location. The traffic is not an issue, we are going to generate some traffic but it is not even going to marginally overwhelm this area. The roads can handle it.

We feel the streets meet all the requirements internally. The subdivision itself is laid out in accordance with the ordinance. If you have any questions regarding the engineering I would be happy to answer them at this time.

Chairman Burden asked if there was any one else wishing to speak on behalf of the preliminary plat request.

Mr. Girdley, property owner and developer, said he had nothing further to add, but would answer any questions.

Chairman Burden asked if there were any questions for the applicant or the applicant's representatives.

Mr. Baugh asked if the interpretation issue of cul-de-sac had been discussed with the City Attorney.

Mr. Weaver replied no.

Chairman Burden asked if the term cul-de-sac is used in the DCSM regarding this requirement, or is the term street used.

Mr. Fletcher said I do not have the language here, but going from memory it reads; the length between the center line of the intersecting street to the center line of the end of the cul-de-sac cannot exceed 800 feet in length and cannot exceed 250 vehicle trips per day on a residential cul-de-sac street.

Mrs. Turner clarified that the length measurement actually goes from the end of the cul-de-sac to the intersection with the next intersecting street that actually goes somewhere.

Mr. Fletcher said there is something else that needs to be pointed out. If the applicant were to continue forward with the presented submittal showing Robinia Street connecting all the way across and all the separate DCSM variances that would be required with that submittal, they would need to come back with a more specific request of all the variances that are being requested. We do not really want to have an open-ended approval of a variance to not meet street grade or not meet the landing requirement standards. We need to have a better of idea of what we are approving variances for.

Mrs. Turner said on the cul-de-sac issue, I would just further add that yes, there are different areas where streets end in temporary cul-de-sacs. Those are ending at areas where, for the most part, are in the City; in other words they are abutting land that is zoned for development, primarily residential development. We, the City, would be reviewing the subdivision plats for that next residential development and seeing that a street does connect and eventually gets out another way for that subdivision. Often streets have to temporarily end somewhere. When we see that somebody is taking a street, ending it to an adjacent property that is zoned for a similar type of residential use, and that there is opportunity for that adjacent property to be developed with a street going thru and connecting to another road, then yes, we would consider that not to be a long cul-de-sac. In this case, it will continue on to property that the County has rezoned for residential development and then adjoins property that is still remaining agriculturally zoned. There is no guarantee that agriculturally zoned land will become residentially zoned in the future and be appropriate for a street connection. As well, the City will not have the authority to review that subdivision or to require a connection at that time. Therefore, we have viewed this subdivision a little bit differently because we do not have the same level of assurances of future street connection that we would if this were in the City.

Chairman Burden asked what is the Planning Commissions feelings regarding the road (Robinia Street) and grade issue. I assume that from what is before us now, it cannot be determined what kind of fill would need to be put in place.

Mr. Fletcher replied correct; that is what I was alluding to earlier. Whether or not we were accurate or the applicant's engineer was accurate, regarding the grade, we just do not know and we do not want to approve a variance for something that is so open-ended. Right now the longer streets are, at some locations, the maximum 10 percent grade; therefore any changes that are done to accommodate the intersecting street would throw-off the design. There is still a lot of work and details that need to be figured out before there is a good idea of what would be developed if this were approved.

Mr. Baugh said is there any argument that we are taking that up now.

Mr. Fletcher asked regarding the variances?

Mr. Baugh said yes.

Mr. Fletcher replied I would say no. What we are discussing this evening is more or less the fact that the applicant needs a variance for a long cul-de-sac. The changes were turned into us last Wednesday and we had time to react to them and point out that these other variances would be necessary if you want to make this work. This is why I also showed the originally submitted plat tonight; because it is up for debate.

Chairman Burden asked what besides the grade would be future requests for variances.

Mr. Fletcher said the sight distance and landing requirements. You have to have 2 percent grade for 25 feet at each landing so that you can stop a vehicle. It is also related to the vertical curves and being able to have sight distance.

Chairman Burden questioned whether Mr. Blackwell said that from their standpoint no variances along those lines would be necessary.

Mr. Fletcher said I think they would probably still be necessary, just not as severe as we originally thought. Mr. Blackwell could potentially engineer something that would meet a 12 percent grade; I know that the City could administratively approve variances to those requirements.

Mr. Blackwell said when he received the revised staff report today he looked at the grades in more detail and feels that he can make the 12 percent work. Would a variance to the landing be needed or for sight distance; it is possible. We are also looking at cutting one of the streets down and that could help us. At this point it is more of a design issue. If I really thought it was going to be 20 percent I would tell my client that there is no way we can get that street in. I think I am closer to 12 percent and can make it work with some grading; but until I do the design details and the City reviews it, we will not know.

Mr. Finks said is what I am hearing is that we do not know what the City's legal opinion is on this cul-de-sac issue.

Mr. Fletcher replied it has yet to be determined whether that needs to be debated or not. Vice Mayor Baugh asked if the applicant had discussed the interpretation with the City Attorney. I do not think there has ever been any discussion or that there ever needed to be a discussion with the City Attorney regarding this.

Mrs. Turner said that years ago when this first came up we did have some discussions with the City Attorney; at that time, I do not think there was a big issue about it with him. We have not talked to him about it in the past few weeks. The City Attorney does not usually make decisions as to whether or not something meets the standards of the DCSM.

Chairman Burden asked if the two basic interpretations of this provision in the manual are 1) that it prohibits any system of streets or a cul-de-sac that interconnects thru one common street, from being longer than 800 feet versus an interpretation that says 2) regardless of how many ways out there are, no individual cul-de-sac in that system can be longer than 800 feet.

Mr. Fletcher said as I stated earlier if the interconnecting street were not there, that first cul-de-sac alone would extend beyond 800 feet in length in itself.

Mr. Baugh said I think the applicant's counsel raises an interesting argument; but it would require a review of language that we do not even have in front of us now. I do not really feel we are in a position to weigh in on the interpretation. My inclination would be to see if the applicant wants to hold off on this and have some discussions with the City Attorney. If we need to react on it tonight I would have to vote no on it. Recognizing that as this goes to City Council the cul-de-sac issue is not going to go away and the applicant's counsel would have an opportunity to talk with the City Attorney. City Council will certainly want to know what the City Attorney thinks about this.

Chairman Burden agreed and said this is too big an area of uncertainty to ignore. Are there any other comments from Planning Commission?

Mr. Finks said he would feel better hearing from the City Attorney, there may be no need for this variance.

Chairman Burden said it appears it could be down to just that issue. Do we want to proceed with this or is there any regard to tabling this.

Mr. Weaver replied to go ahead and proceed with this tonight.

Mr. Blackwell said we are going to proceed, we are asking for this variance even though we do not think we need it. There is no real difference here than what has previously been reviewed and approved by this body and the City Council before, there are just fewer lots. We are asking for the variance, if you grant it as you have before, it is no longer an issue; therefore we would like to proceed with a vote.

Mr. Fletcher said if there is to be a vote then I think you would be voting on the previously submitted plan, rather than the most recent plan, because we do not have specified design variances to those other requirements I was speaking of.

Mrs. Turner said actually we are waiting on the applicant to tell us what they are submitting as far as what is being voted on. If the applicant wants Planning Commission to vote on the one plat showing the connection between the two streets with no further variances, then that is what would be voted on. If during the design work it is discovered that further variances are necessary, then the applicant would have to come back.

Mr. Blackwell said we submitted the latest plat design with the connecting streets and we see the merit in it and we can make it work from an engineering standpoint.

Chairman Burden asked if there was any further discussion or a motion.

Mr. Baugh moved for an unfavorable recommendation to City Council.

Mr. Finks seconded the motion.

Chairman Burden called for a roll call vote on the motion.

Commissioner Chenault – yes

Commissioner Finks – yes

Vice Mayor Baugh – yes

Commissioner Da'Mes – yes

Commissioner Jones – yes

Chairman Burden – yes.

Chairman Burden said the motion to recommend against the preliminary plat and variances is approved. This item will move forward to City Council on October 13th with an unfavorable recommendation.

Ordinance Amendment – 10-3-139(b)

Chairman Burden read the request and asked staff to comment.

Mr. Fletcher said City staff is proposing to amend the portion of the Zoning Ordinance that outlines the procedures on applications and appeals for the Board of Zoning Appeals (BZA) Section 10-3-139. The proposed modification falls within subsection (b), which is the segment that defines the period in which violations must be corrected or appealed prior to the City taking legal action to rectify zoning violations. Specifically, the amendment would implement a ten day process—rather than a 30 day process—for notices of violations to property owners when they are involving temporary or seasonal commercial uses, maximum occupancy limitation of residential dwelling units, keeping of inoperable vehicles and junk, or similar short term, recurring violations.

The above discussed zoning violations are the most common types of zoning infringements that can be visually seen in the city and hence are the most regular complaints received by staff and witnessed by staff during our monthly pro-active zoning program. The Code of Virginia Section 15.2-2286 (4) gives the City the authority to prescribe an appeal period of less than 30 days, but not less than 10 days, for notice of zoning violations pertaining to the above mentioned infringements. Staff would like to initiate this change to offer a quicker and stronger management method for enforcing the City's most recurring zoning violations.

Staff is proposing for subsection (b) to read as follows (the proposed additions are shown in italics):

An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter. Such appeal shall be taken within *ten (10) days for a notice of violation involving temporary or seasonal commercial uses, maximum occupancy limitation of a residential dwelling unit, keeping of inoperable vehicles and junk, or similar short term, recurring violations, or within thirty (30) days after the entry of the* ~~any other~~ decision appealed from by filing with the administrator, and with the board, a notice of appeal specifying the grounds thereof. The administrator shall forthwith transmit to the recording secretary of the board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate of stay would, in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record, on application and on notice to the administrator and on due cause shown.

In any case where the administrator has certified conformity with the provisions of this chapter and a building permit has been issued and construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, suit may be filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of such permit. The court may hear and determine issues raised in the litigation even though no appeal was taken from the decision of the administrator to the board of zoning appeals.

The proposed change is for the described violations only (the storage of junk and debris, inoperable vehicles, occupancy concerns, etc.), and therefore would not change the enforcement timeline of other zoning violations such as illegal uses, setback infringements, and so forth. Implementing this new procedure should strengthen our enforcement capability and ultimately keep the city clean of undesirable nuisances. Staff supports a favorable recommendation to City Council.

Chairman Burden asked if there were any questions for staff.

Mr. Baugh said does this include sofas on the front porch.

Mr. Fletcher replied no, that is within another section of the City Code that deals with Public Works and Sanitation.

Mr. Chenault moved to approve the ordinance amendment.

Mr. Finks seconded the motion.

Chairman Burden called for a voice vote on the motion.

All voted in favor of the motion to approve.

Chairman Burden said the motion is approved (6-0) and this will move forward to City Council with a favorable recommendation on October 13th.

Unfinished Business

Mr. Chenault said he would like to make a comment. When I was on City Council the Cypress Park project came before us and I voted for granting the preliminary plat at that time. The question arises as to why vote for it then and not vote in favor of it tonight and my response to that is there is no sense in perpetuating a mistake twice. I just want that to be clear.

Public Input

None.

Report of secretary and committees

Mrs. Banks said the Zoning Inspector visited the North Main Street sector of the City this month and there were 4 violations consisting of inoperable vehicles and/or discarded materials. Next month, inspectors will be in the Liberty Street sector of the City.

Other Matters

Mr. Fletcher reminded Planning Commission of the Comprehensive Plan Work session on Wednesday, September 16th, at 7:00 p.m. in the Community Development Classroom. We will be reviewing chapters 3, 5, and 6.

Adjournment

The meeting was adjourned at 8:45 p.m.

Chairman Jared Burden

Secretary, Alison Banks